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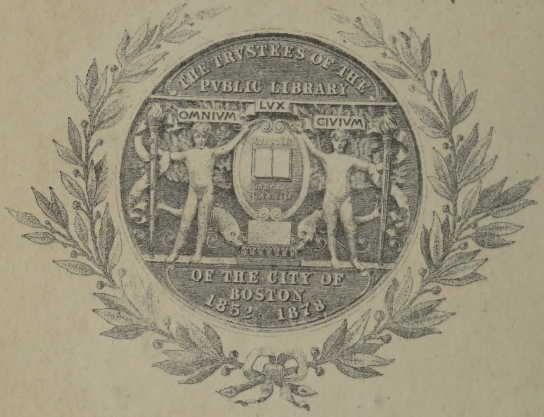
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SPEECH

OF

HON. J. S. MILLSON, OF VIRGINIA,

426.576

IN THE HOUSE OF REPRESENTATIVES, FEBRUARY 21 AND 26, 1850,

In Committee of the Whole on the state of the Union, on the Resolution referring the President's Message to the appropriate Standing Committees.

Mr. MILLSON said: I endeavored, Mr. Chairman, to get the floor immediately upon the close of the remarks submitted by one of the Representatives from Pennsylvania, [Mr. STEVENS.] I wished to give instant expression to the irritation occasioned by the gross and offensive allusions to the State from which I come. That irritation, however, was but momentary, and has since subsided into a quiet feeling of loathing and indignation—a feeling more fitting the accusation and the accuser. In speaking of the slave population of my State, and of the employment of her citizens, that member had the boldness to declare, that Virginia was now so degraded, that——but I will not, I cannot repeat the gross language uttered by him. I could not do so without violating the decorum of this body—without outraging those proprieties which should, at all times, be respected and observed—without shocking the delicacy of that portion of our auditors, who attend our deliberations, in the confidence that they will hear nothing to offend their modesty or wound their sensibility. Sir, I do not mean to defend Virginia against such charges—such imputations as these—she would disdain to answer them. It would, indeed, be a kind of degradation were she, by even the humblest of her representatives, to acknowledge that such vindication could be necessary. The member from Pennsylvania has no power, and can hardly have the expectation to do her injury. Does *he* talk of *degradation?* Does he call degraded the native land of Henry, of Wythe, of Pendleton, Mason, Marshall, Jefferson, the Lees, the Randolphs, and of that greater man than all, whose wisdom and whose valor secured to the member from Pennsylvania the very privilege he has abused, of addressing the representatives of a free and happy people? Look there! look there! [pointing to a full-length portrait of Washington.] Let that majestic figure awe him into confusion and shame. I leave him to the condemnation of that constituency whose opinions and feelings I am sure he has misrepresented. I leave him to the reproaches of his colleagues, whose sense of decency and justice I know he has outraged; and, what will be a far greater punishment than all, I leave him to the blighting applause of his sympathisers and abettors.

Sir, I desire now to notice, very briefly, some of the remarks which fell from the gentleman from Ohio, [Mr. CAMPBELL.] That gentleman, with what object I do not know, was pleased to instruct the House upon some points of our early history, by reading, among other things, an account of public meetings, held in Virginia, before the Revolution, at which resolutions were adopted against the importation of slaves—that is to say, resolutions against the African slave trade. These resolutions were read by the gentleman with an air of triumph, and he spoke of them as if he supposed that the sentiments of the present people of Virginia, upon this subject, were sadly different from those entertained by their ancestors. Did he design to make the impression that the African slave trade would be favored or approved by the people of Virginia, at this time—or, so far as he knows, or has ever heard, by a single person among them? If he did, I tell him he spoke without warrant; and I tell him further, that no one has displayed more zeal and enthusiasm, in his efforts to suppress this traffic, still carried on by northern men, than a distinguished citizen of Virginia, Mr. Wise, while representing the United States as minister at the Court of Brazil.

The gentleman, too, spoke with great complacency of the superior enlightenment of the free States of the North and West, and took care to make especial allusion, in no very complimentary terms, to Virginia and North Carolina. Would the gentleman be willing to look to the public councils of the country for the test of this relative intelligence? The gentleman from Massachusetts [Mr. MANN] may perhaps be excusable in indulging, as he has done, such reflections as these. If I am correctly informed as to his habits, he has been so actively employed in heaping up stores of knowledge for himself, that he has had little leisure for observing the acquisitions of others. I do not know that this excuse is applicable to the gentleman from Ohio.

But I pass on to other matters. I have felt much surprise, Mr. Chairman, that, since the reception of the President's messages relating to California, the friends of the Administration on this floor have not perceived an existing necessity for some defence of the course and opinions of the Executive. The honorable gentleman from Massachusetts, [Mr. WINTHROP,] who has just taken his seat, has done little more than merely to allude to them. Can it be, that they suppose no apology to be necessary; or are they restrained, by prudential considerations, from attempting a vindica-

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tion not likely to be successful? It might not be easy to justify the President's misrecital of the clause in the Constitution which relates to the power of Congress "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." Yes, the territory or other property *belonging to* the United States. If it was accidental, it was, in the present state of the country, a very unlucky accident, that a *southern* President should have declared in a State paper, that Congress has power "to make all needful rules and regulations, respecting the *Territories* of the United States"—that this humble word *territory*, descriptive only of land or real estate, should be changed to *Territories*—honored with the imperial plural, and dignified with a capital initial—that this dependent *territory*, classed with the other property "*belonging to*" the United States, should be converted into Territories of the United States, as if the Constitution had reference to those political communities which have since been known by the designation of *Territories*.

It was still more unfortunate that the President should encourage an opinion of the power of Congress to prohibit slavery in California—an opinion which would be plausible, if his own language were really that of the Constitution—by saying that, "*as* under the Constitution, Congress has power to make all needful rules and regulations respecting the Territories of the United States, every new acquisition of Territory has led to discussions on the question, whether the system of involuntary servitude, which prevails in many of the States, should, or should not be prohibited in that Territory"—as if he supposed that these discussions were all natural and proper, and relating to subjects within the legitimate control of Congress, "*as* it has power to make all needful rules and regulations respecting the Territories of the United States."

Here, the hour being late, Mr. MILLSON gave way to a motion that the committee rise: on Tuesday, the 26th of February, he resumed, and concluded his speech, as follows:

Mr. CHAIRMAN: When I yielded, on Thursday, to a motion that the committee rise, I was proceeding to comment upon the President's misrecital of that clause of the Constitution which relates to the power of Congress to make "all needful rules and regulations respecting the territory or other property belonging to the United States," and upon his substitution of other language, which seemed to imply his own belief that Congress possess the power to legislate for the prohibition of slavery in the Territories.

But, sir, it was the "unkindest cut of all," that the President should have given the weight of his official station to a doctrine that is utterly destructive of the hopes, and subversive of the rights of the South—the doctrine that *Mexican laws still govern the inhabitants of California*. His language is, that "the people of this Territory still enjoy the benefit and protection of their municipal laws, originally derived from Mexico." He does not show in what an important sense this statement is erroneous—in what an unimportant sense it is true—but vague, broad, unqualified language is used, from which the inference is, that in the opinion of the President, the institution of slavery, forbidden by the Mexican laws, cannot, without a change of those laws, be legalized in California.

But, sir, all these expressions of erroneous and mischievous opinion and doctrine, dwindle into utter insignificance, when compared with the startling ACTS, which the President has encouraged, abetted, and participated in. A short time ago, he transmitted to this House a writing, which he was pleased to call "The constitution of the State of California." He informed us it had been received from General Riley, but he did not tell us whether it was the composition of General Riley, or by whom it was written or composed; nor did he even tell us why, and for what purpose it had been drawn up; nor for what object it was communicated to this House. Sir, where *is* this *State* of California? In what hemisphere does it lie? Is it a foreign State in amity with the United States, or is it a part of "the territory or other property belonging to the United States?" Are the inhabitants of this *State* of California aware of the composition of this writing, and do they concur in the views and sentiments expressed in it? If they do, I should like to be informed when and in what manner this concurrence of opinion was expressed. I should like to know what number or proportion of them were consulted about the drawing up of this very creditable specimen of composition—for it is really so—whether they are under the control of any laws, and from what source they derived them; or whether they are left solely to the guidance of that code which is familiarly called *the law of nature*. If they are in this condition, there is certainly the more blame to those whose duty it may have been to provide them other laws; but still, in the absence of such laws, it is difficult to imagine upon what principle of selection they proceeded in determining who and what manner of persons should be entitled to unite with them in the expression of the views set forth in this paper. It might be difficult to show that, by the principles of this *natural law*, the one sex has a clearer "inalienable right to life, liberty, and the pursuit of happiness," than the other; or that the age of twenty-one years is precisely the period when the right of self-government commences. If the inhabitants, indeed, have lately passed through a *revolution*, why, that explains everything; but, if the President has incited or encouraged such a revolution among a people owing allegiance to the United States, he has incurred a grave responsibility.

Sir, from some expressions in the first California message, I am led to suspect that this *terra incognita*—this *State* of California *is* a part of our territory on the shores of the Pacific; and that the proceedings, which resulted in the adoption of what is called a State constitution, *were* advised and encouraged by the President.

Let me read some of the expressions to which I allude:

"I did not hesitate to express to the people of these Territories my desire that each Territory should, if prepared to comply with the requisitions of the Constitution of the United States, form a plan of a State constitution, and submit the same to Congress, with a prayer for admission into the Union as a State."

He advised the people! What people? Certainly, there were none there, who, *by law*, were authorized to act upon his advice. *He wished each Territory to come into the Union as a State!* Here, too,

he assumed an authority that belongs to Congress alone. How could he possibly know what disposition Congress might think proper to make of the territory acquired from Mexico? In 1804, Louisiana was divided into two Territories; and, in 1822, East and West Florida were consolidated into one. And yet, the President, in advance of all legislation, advises the people of *each* Territory, to form a plan of a State Constitution. Again:

"Under these circumstances, I thought and still think, that it was my duty to endeavor to put it in the power of Congress, by the admission of California and New Mexico as States, to remove all occasion for the unnecessary agitation of the public mind."

The unnecessary agitation! Whigs of the South, what say you to this? But surely there was an easier method of preventing this agitation: he had only to declare his purpose to redeem the pledges made on his behalf by his southern supporters before his election to the Presidency. I am sorry, sir, that the President has not thought fit to adopt this simple mode of allaying the agitation which he so much deprecates. Instead of that, the people now dwelling in California and New Mexico are invited to usurp powers belonging only to the representatives of the people of the United States—*to prevent the public mind from being unnecessarily agitated!* Who knows but the same motive may induce the President to communicate to this House the constitution of the *State* of Columbia, soon, perhaps, to be adopted by the people of this District, in the exercise of those natural rights of self-government which have been respected on the other side of the continent?

Sir, had the President been disposed to seek for the limit of his authority in the precedents supplied by the early legislation of Congress, he could have been at no loss to understand the extent of his power. In October, 1803, soon after the acquisition of Louisiana, a law was passed authorizing the President to take possession of that territory, and to appoint the military, civil, and judicial officers. A similar law was passed in 1821, in relation to Florida; and in 1822, such citizens as possessed the qualifications prescribed by law, were authorized to elect a delegate to Congress. Express authority was given to the President, both in the case of Louisiana and Florida, to appoint a legislative council. If these early precedents were forgotten, how was it that the law which passed at the last session of Congress, not twelve months ago, was also overlooked? I allude to the act establishing a territorial government for Minnesota. Congress, in their simplicity, then supposed that the right to prescribe the qualifications of voters was exclusively theirs; and that it was especially proper to confine to citizens of the United States the high privilege of regulating the domestic affairs of a territory "*belonging to the United States.*" But new lights have lately dawned upon us!

Sir, whatever surprise and regret the course and opinions of the Administration may have occasioned to its southern supporters, I cannot say they were unexpected to me. I could have wished, however, that my apprehensions had not been realized, and that the President, elected as he was, with the concurrence of so many of the southern States, would have deemed their cause that of the Constitution. But I fear it is now too late; and it is with real mortification that I find myself constrained to class President Taylor in the number of our opponents. But there is only the greater necessity laid upon us, supported as they seem to be, by this powerful auxiliary, to expose the errors into which they have fallen, and assail the positions they have assumed.

I trust I shall be enabled to enter upon this discussion with calmness and moderation, and with all proper parliamentary deference to the feelings and opinions of those who differ from me.

We are told, sir, that it is not the purpose of the North to *abolish* slavery in any State or Territory where it now exists, but only to prohibit its introduction into territory which is now free. This is the statement of the northern position, and it is this mode of stating the question at issue between us, that has exerted so disastrous an influence upon the opinions of the people of the non-slaveholding States. But in declaring that their sole object is to prohibit the introduction of this institution into a country where it does not now prevail, they only beg the question. They take for granted what they are required to prove, and what I now most emphatically deny. *The institution of slavery does now exist in California*, and the other territory acquired from Mexico; and the legislation contemplated by the North, if it could have any constitutional validity at all, would abolish and suppress it, and not merely prevent its introduction. I do not say that there are *slaves* in California; but that *slavery*, as a recognized relation—as a domestic or political institution, does at this time prevail throughout California and New Mexico. The absence of slaves does not necessarily prove the unlawfulness of slavery. If all the slaves in the State of Virginia should be sent beyond her borders, or emancipated by their several proprietors, could it be said that *slavery* no longer existed there?—that this ancient and legalized relation between master and servant, was, by this accidental absence or emancipation of the slaves, destroyed or prohibited? Would the right of her citizens to acquire and introduce other slaves from other States be at an end? Undoubtedly not. The right to hold slaves would exist, though there might be no slaves. A right always precedes the occasion for its exercise. The right to establish a bank precedes the actual creation of the bank; the right to elect to office precedes the actual appointment of the officer; the right of property in a house precedes the actual erection of the building. The non-existence of a thing does not prove its illegality. The absence of persons holding the relation of husband and wife, would not prove the unlawfulness of the institution of marriage.

Whether, then, the institution of slavery, or the right to hold slaves, does or does not exist in California, depends not at all upon the actual presence of slaves in that Territory. To determine this point, we must ascertain whether the existing law in California authorizes or forbids slavery there. If it is authorized, then the effect of northern interference is to *abolish* slavery where it now exists, and not simply to exclude it from places where it does not exist.

What, then, are the laws prevailing in California? This is a material inquiry; for, if gentlemen insist that slavery is at this time prohibited in that Territory, they must tell us by what laws this state of things has been produced.

The only laws to which California is or can be subject, are the Constitution of the United States, the acts passed from time to time by Congress, the treaty between the United States and Mexico, and what is generally called the local law existing in California at the time of its acquisition by the United States. If slavery is now excluded from that Territory, it must be by force of some one or more of these; for no other does or can exist there. If it be prohibited by none of these, then it is not prohibited at all. I shall endeavor, Mr. Chairman, to show that it is not forbidden by any of them; and if I succeed in doing so, it will appear that, notwithstanding the plausible assurances of the North, what they propose is really to abolish the institution of slavery where it now legally exists.

Is slavery excluded from California by the Constitution of the United States? But here I may be told that the Constitution has no application to a Territory, and that I am wrong in citing it among the laws to which California is subject. I know, sir, that of late this extraordinary doctrine has been held by several distinguished and gifted men. I felt, last winter, much astonishment when I learned that it had been proclaimed by a Senator from Massachusetts, whose forensic reputation is so well established as perhaps not to suffer even from the announcement of such an opinion as this. *The Constitution does not extend to the Territories!* Why, sir, what *is* the Constitution? It is a body of laws, rules, mandates, established *by* the United States *for* the United States. It directs how these States or their agents shall do what is permitted to be done by *them* at all. It is addressed to *persons* not *places;* and wherever there are persons assuming to act at all under its authority, *there* does the Constitution apply to them, and direct, command, and control them. It is, then, almost a solecism to say that the Constitution does or does not *extend to a Territory.* Gentlemen vaguely speak of it as if it was something tangible, material, malleable, which, like gold-leaf, might be hammered out and made to spread itself from place to place. It has no parts, no physical extension, and does not occupy space. It is the supreme and sovereign *will.* It acts upon all other wills subject to its control. It operates upon intellectual agencies; and wherever there are such agencies deriving their authority from the Constitution, or from those whom the Constitution called into being—no matter whether in the Territories or in the States—it addresses itself to them and commands their obedience. Let them go where they may—to Europe, Asia, Africa, on land or the seas—this sovereign will follows them, directs them, controls them.

Sir, not only the Constitution, but every constitutional act of Congress applies to the Territories. Even a law directing the building of a house in the city of Washington, extends not only to the District of Columbia, but to all the States, and to all the Territories of the United States. Let any controversy occur—no matter where—respecting such a law, every judge, every court, every agent of the Government will be bound by its provisions. The *house* would not extend to the Territories; but the supreme will, embodied in the law, extends wherever there are persons who owe obedience to it.

The error into which so many persons have fallen upon this point, results from their confounding the objects or subjects of certain provisions of the Constitution with the Constitution itself. The Constitution may and does authorize many things to be done at one place, and not at another. Shall it, therefore, be said that it does not extend to both places? It requires certain duties to be performed by one class of officers to the exclusion of others. Does it, therefore, not extend to all?

This view of the subject suggests the reply to Mr. Webster's triumphant inquiry, how the Constitution could apply to the Territories, when the judges in these Territories hold their appointments, not during good behavior, as required by the Constitution, but only for a term of years? The answer is very plain and simple. If the Constitution authorizes the appointment of judges in the Territories for a term of years, how can it be said that it does not extend to them? If it does *not* authorize it, then away goes the argument founded upon this difference of tenure.

Having succeeded, Mr. Chairman, as I trust I have, in showing that the Constitution controls all the agents of the Government established by it, wherever they may be—whether in the States or in the Territories, at home or abroad—I proceed to consider whether slavery is prohibited in California, or anywhere else, by force of any or all of its provisions. Does it *proprio vigore* exclude, prohibit, or abolish slavery in any place or country subject to its operation? If so, show me the provision by which this is effected. In what clause or section will it be found? It is not for me to prove that the Constitution works no such results. It is incumbent on those who hold the affirmative side of the argument to point out where and how slavery is prohibited by the Constitution. But let me ask how it was that slavery continued to exist in Louisiana and Florida after their acquisition from France and Spain, if the Constitution, of its own proper force, abolishes or prohibits it wherever it operates? Let me not be told that its continued existence was secured by treaty—for no treaty could have any validity that was made in contravention of the Constitution. Why is not slavery abolished in the District of Columbia—nay, why not in the States—if the position I am assailing be correct? The Constitution of the United States is the supreme law of the land, and no State could maintain for an instant an institution that was prohibited by that instrument.

I think, Mr. Chairman, that I am justified in concluding, that if slavery be prohibited in California, it is not by the mere force and operation of the Constitution of the United States. But is it prohibited there by any act of Congress? If so, show it to me. When was it passed? What are its provisions? But this will hardly be affirmed. No gentleman will be so bold as to maintain that any act of Congress has ever been passed, abolishing or prohibiting slavery in the territory acquired from Mexico, when he remembers the many efforts that have been made—up to this time happily unsuccessful—to procure the passage of an act for this very purpose.

But was it by the treaty with Mexico, recognizing our title to California, that slavery was prohibited in that Territory? I shall not, Mr. Chairman, stop to show that such a stipulation would have had no validity, nor is it perhaps material to suggest, that the country was already ours be-

fore that treaty was negotiated. I simply deny that it contains any such provision. If any such exists let it be pointed out. It is not, then, by the Constitution, by any act of Congress, or by the Mexican treaty, that slavery is prohibited in California, if it be prohibited there at all. There is only one other sort of law, to which that Territory is supposed to be subject; and it remains to inquire whether slavery is prohibited by that—I mean what is usually called the local law, or the law existing at the time our title accrued.

I know, sir, that this is the ground upon which gentlemen on the other side will be disposed to rest their argument. I know, too, that very many persons in the South—men of gallant spirit and patriotic impulses—who are quick to feel and ready to resist the meditated aggression of the North, entertain the opinion that slavery is now a prohibited institution in California and New Mexico, under the operation of a law not derived from the United States, and independent of the Constitution and the acts of Congress. With great deference to these opinions, I beg leave to say, that I think they proceed from an imperfect understanding of the views of some writers on national law, and the reasoning of some of our courts of justice on this subject. The position assumed by those who maintain that slavery is now a prohibited institution in California, is, that the Mexican laws, existing there at the time of its conquest, or, if gentlemen please, its acquisition by treaty, continue until they are repealed or annulled by some express and positive legislation; and that, as slavery was abolished and forbidden by Mexico, it is now prohibited, because the Mexican law still continues in force. Sir, with all my respect for the high authorities that have assumed and announced this position, I take leave to say that, in my humble judgment, it is as erroneous as it is dangerous. I deny that any *Mexican* law is in force at all, in any territory belonging to the United States, except by adoption into our own code, by the authorities of our own Government, having jurisdiction over the subject. What, sir, have we conquered these people by our *arms*, only to be conquered in turn by their *laws!* Is our control over the inhabitants less perfect now, since peace has been declared, and the country quietly surrendered to our enjoyment, than it was when our possession was contested, and their submission involuntary? The very proposition involves a confusion of ideas. Stated in another form, its incongruity is just as apparent —*they have a right to govern us, till we choose to govern them.*

Let us examine the sources of this erroneous doctrine. I have said that it proceeds, as I think, from a misunderstanding of the true effect and meaning of some of our judicial decisions. I do not mean to attack these decisions, but only to explain them; though I do not wish to be understood as admitting that the *reasons* given by judges for deciding a cause in a particular way, are of any sort of obligation upon us, except so far as they may be commended to us, by their own intrinsic value. Their *decisions* are binding enough; —certainly it is not our province to annul them. They put an end to the controversy which it was their duty to settle; but, as for their *reasons*, they may be just what they please. That is a matter for themselves entirely.

There are two kinds of law by which the American people are governed, and by which their rights of person and property are ascertained and controlled—legislative acts or decrees, in which I include constitutional or fundamental law—and the decisions or adjudications of courts and judges. In all controversies that arise for the purpose of asserting rights or redressing wrongs, where a rule of decision is prescribed by legislative authority, it must, of course, be respected, and carried into effect by the courts. But where no such rule of decision is declared, the judges must decide all controversies that are brought before them, according to their own views of justice and right. They have, of course, rules by which they come to their conclusions; but, except when prescribed by the legislative power, they are rules, adopted by themselves or their predecessors, and their simple object is to enable them to ascertain *what they ought to do.* A judge in California, at this time, would probably decide most cases occurring there, to which neither the Constitution nor any act of Congress had relation, according to the principles of the former Mexican law—provided no existing right of any American citizen were violated. Why? Because he would conceive it to be, as other judges and publicists have correctly conceived it to be, *just* and *right*, to decide them in accordance with the principles and rules of action, with which the people were familiar, and by which they had been accustomed to regulate their intercourse. There is no antecedent obligation to decide them in this manner. He does it, because he and his predecessors have deemed it right and proper to do so. He does not administer the Mexican law, because it is *in force*, and *must be* administered—it is only the judge himself that gives it force. It is not the Mexican law constraining the American judge: but the American judge moulding the plastic customs of the country; applying them, when they are fitted to the welfare of the people, and changing, or rejecting them, when they are not so. The very appeals, which, to prove the opposite doctrine, are so frequently made to the decisions of the Supreme Court, rather show that it is to our own tribunals we look, for the law, by which the relations of person and property, in California, must be regulated. Had these decisions been different from what they are—and they would have been different if the judges had supposed it to be right and proper to make them so—had they declared that, in no case, should any regard be paid to the former laws or customs of Mexico—why, then, all rights would be ascertained—all remedies enforced—all controversies settled, without any reference to them at all. And this proves, sir, that it is the American court that gives life to the Mexican law, and not the Mexican law that controls an unwilling American court.

Sir, this is all that is meant by the courts and by writers on national law, when they speak of the laws of a conquered country continuing until others are prescribed by the conqueror. They continue, only because *he chooses* to continue them. They are enforced, only because his judicial tribunals *choose* to enforce them. It is upon this assent, this adoption, that their force and validity depend; and not at all upon their original enactment and promulgation by a power which has ceased to exist. When they relate to matters,

about which he is *careless* or *indifferent*, he will indulge the conquered inhabitants, by settling their disputes upon the principles to which they are accustomed. When they relate to things in any way concerning himself, or affecting his own wishes and interests, he will decide them as his own wishes and interests may prompt. This being the case, how can it be said that the rights of person and property of such citizens of the United States as may remove to this new territory, for the purpose of entering upon the enjoyment of their conquest or purchase, will be and *must be* decided by the tribunals established there by our own Government, not according to the usages and principles prevailing in our own country, but by those upon which this newly-acquired community had been accustomed to settle their own disputes? How dare any court or judge decree that a citizen of Virginia shall forfeit his right of property in his slave, recognized and guarantied by the Constitution and laws of the United States, merely because this conquered and subject people had once declared, when they were competent so to declare, that they themselves would hold no such property? I deem it wholly unnecessary to push this argument further.

Sir, I cannot but suspect that our opponents, however they may assail these conclusions, are really aware of their force and justice. If they are not, why did they oppose the adoption of the bill, generally known as the *compromise bill*, which was introduced into the Senate by Mr. Clayton, and after it had passed that body, was defeated in the House, almost exclusively by the northern vote? That bill conferred no privilege upon us; we demanded none. It did not propose to establish slavery in this Territory; we asked no such thing. Its object was to submit our existing rights to the adjudication of the courts of law; to leave things as it found them; to retain such rights as, under the Constitution, we now possess; not to confer any that we do not now enjoy.

The North would not consent to this. Why, sir, except that their aim was and is to *abolish* slavery where it now exists, and not merely to prevent its introduction into a territory where it is already prohibited? Our position is fair, just, impregnable. We seek to maintain things as they are—to claim the rights already secured to us. We ask no law for the establishment of slavery in this territory. If the Constitution and the existing relation between the States of this Union secure it to us, it is you, gentlemen of the North, who violate the Constitution by wresting it from us. If we have no such right, we do not ask it of you. We are passive; you demand action, and action that is either unconstitutional or unnecessary. We are content with the present Union; you are not satisfied with it. You insist on adding something to the Constitution—taking something from our right as secured by the Constitution. Will you deny this? If these rights are not already ours by the Constitution, how can we get them without legislation? And why do you attempt to take from us what we have not got? And yet you preach to us about *Union*—you talk of the dangers that menace it, as coming from the South! *You*, who would tempt a dissolution of the Union rather than forbear to do what, upon your own argument, is a vain and idle thing!

Union! Yes, it is a well-chosen theme for northern declamation. The very name breathes melody to the men and women of the South. Much have they borne for the sake of this Union. Your grinding imposts, for protecting, or in other words, pampering northern capital and labour—your banking schemes, designed to subject the real and solid opulence of the agricultural States to the control of a fictitious wealth, manufactured in the halls of Congress—your wasteful and unconstitutional appropriations of the public money, for purposes in which they could not participate,—all these have for years been endured and submitted to. The union made amends for all. But the union they love and are desirous to maintain, is not the union of the lion and the jackall—not the union of the vulture and the lamb—but a league between equals—States—sovereignties—exercising, by a common agency, the few powers not reserved for their separate control, and exercising them in a spirit of kindness, deference, and respect for the rights, and even for the prejudices, of one another.

The views I have presented may suggest the reason why I have not offered *my* plan of conciliation and compromise—conciliation of *whom?*—compromise of *what?* But it is the fashion of the day. We have pacificators, who *breed quarrels;* and mediators, who *foment dissensions.* But I offer you a plan of conciliation and compromise—one, that you dare not reject—one, that you have sworn to support! It is here—*(holding up the volume containing the Constitution)*—the Constitution! We ask NOTHING that this instrument has not assured to us—*we demand* ALL *that it has.*

I have attempted, Mr. Chairman, to show that the proposed legislation prohibiting slavery in the territory lately acquired from Mexico, would either abolish slavery where it now exists and take from us rights which we now possess, or that it is a vain and idle thing. In either view it is proved to be mischievous, and ought to be frowned down by every friend of justice and the Union. But it may be supposed by some, that though under the compact which unites us together, we now have, and without further legislation would continue to have, the rights that we claim, it is yet competent for Congress to take them from us. But, sir, it is very clear, that if this authority be possessed by Congress, it must have been conferred by the Constitution. It is almost what the logicians call an identical proposition to affirm that Congress, which is the creature of the Constitution, can exercise no authority that is not derived from that instrument. Now tell me where such a power was conferred; show me the clause that gives it any control over the subject of slavery in the States or the Territories of the United States. I pass by, without a word of comment, the consideration of the clause which authorizes needful rules and regulations respecting the territory or other property of the United States—for he must be of a very sanguine temperament, indeed, who fancies that the northern argument can derive aid from any construction of this language, however forced and latitudinous. If no such clause can be pointed out, the argument is at an end. Powers not granted are reserved. It is not necessary to show that they are forbidden. But though not necessary, it would be quite easy to show that there are, in the Constitution, clauses and phrases which recognize the want of power in Congress to legislate for the

suppression or exclusion of slavery. I will refer only to one. It is the clause which provides that "no person held to service or labor in *one State* under the laws thereof, escaping into *another*, shall in consequence of any law or regulation therein be discharged from such service or labor, but shall be delivered up," &c. The Constitution does not here refer to *Territories;* and yet will any one deny that the owner may claim his fugitive slave in a Territory? Why was *territory* then not mentioned? Simply because it was not necessary. The Constitution prohibits the making any law or regulation by a *State* to the prejudice of the owner's right, because such law or regulation might otherwise be made by a *State*. But in a territory, or *the* territory, no power to make such law or regulation existed at all. No legislation could apply to it, except under the authority of Congress; and Congress could make no such law or regulation, because no such power was conferred by the Constitution. It was not necessary, then, to guaranty the right of the owner in a territory, because no power existed to impair it. The omission of this guarantee proves that the absence of all right to interfere with the slave owner in a territory, or to make any law or regulation impairing his right of property, was taken for granted.

Let me suggest, too, that this was obviously the opinion of the Congress that passed the law in aid of this provision; for in the act of February 12, 1793, section 3, the word *territory* is inserted both as to the place *from whence* and the place *into which* the slave might escape. Though there was no *express* constitutional guarantee of the right of the slaveholder, except in a *State*, they seemed to be aware that it was their duty to protect it also in a Territory, and that the omission of this word in the Constitution only proved that, except in the States, no power existed to pass a law in violation of his right.

It does not follow from this that Congress have no authority at all to legislate for the Territories. I believe that they have; but as the time allotted me under the rule of the House, is nearly out, and as the subject is one of very considerable importance, I must reserve for some future opportunity the remarks I had intended to submit upon it.

And now, Mr. Chairman, before I take my seat, allow me to ask, Suppose I am wrong in the opinions I have expressed; suppose that slavery is now prohibited in California; or, admitting the absence of any prohibition, that we have the right to suppress it,—is it expedient, is it *humane* to do so? I will not invoke sympathy for the slaveholder; it would, perhaps, be vain. But have gentlemen no pity for the slave? If, as they politely tell us, slavery be a great crime, have they no mercy for those who are the victims of this crime? Let them reflect upon the probable consequences of penning up the slaves within a narrow limit—their great increase in number—the lessened demand for their labor—the diminished inducement to good treatment—the war between the two races likely to spring up—and let them ask themselves the question, whether it would not be better to extend slavery than restrict it—*by a massacre of the slaves.*

But, sir, however indifferent to the fate of the slave may be some of the descendants of those upon whose heads rested the original guilt of this imputed crime—however an hereditary hatred of the African race may prompt *them* to multiply upon the offspring the injuries first inflicted by their fathers upon the earlier victims of their avarice—*we* recognize, among the other obligations which our condition has imposed upon us, the duty to protect, preserve, and defend them. We feel neither sympathy nor respect for those who think themselves absolved from the *practice* of humanity, if they applaud the *sentiment*. We feel as little sympathy or respect for those—and there are some such, but, I trust, none in this House—who see, in the consummation of these designs against the peace and safety of the South, only a new occasion of profit—new sources of wealth—who oppose slavery extension from no lofty impulse of patriotism—no tender promptings of sensibility, but because New England labor disdains competition with the pauper labor of Europe and the slave labor of South Carolina. Really, sir—if the subject be not too solemn for irony—it is difficult to know which most to admire, the *chivalry* of the effort, or the *disinterestedness* of the motive. *They* are not moved by the dangers that *we* are to encounter; *they* are not disturbed by the losses that *we* are to bear. They wonder, too, that we should exhibit so much reluctance to aid them in their benevolent designs, and should evince so much sensitiveness when they are proposed to us. They call up the cherished remembrances of the Union, by way of allaying our discontent and soothing us into calmness, as if the preservation of the Union depended upon the success of their schemes. They know our love for the Union, and they seem to suppose that no demand will be refused, no aggression repelled, if made in the name of that Union—like the general who, in attacking his Egyptian enemy, placed in the front of the battle the objects of their idolatrous worship. But, sir, they ask what is inconsistent and impossible. The Union, established by the Constitution, cannot survive the destruction of the Constitution. The Union—such as it was designed to be—such as it has been—a Union of equal States—of independent Republics—cannot possibly continue when all equality is subverted, and the weaker part forced into a condition of inferiority and dependence. We cannot have what has ceased to exist. What is no longer possessed we cannot continue to enjoy.

Let not gentlemen seek to alarm us, or amuse themselves by predictions of danger to the Union, from anything that *we* may do. Especially let the gentleman from Massachusetts [Mr. MANN] cease to talk about the resolutions of Southern Legislatures, and the decrees of a Southern Convention. If Disunion should ever come—and may God in his mercy prevent it—his approach will be *stealthy;* his features will be *masked;* he will be first seen HERE—in this Hall—arrayed in the trappings of a spurious legislation; and, like the strong man of the Scriptures, when least feared, throwing down the middle pillars of this beautiful temple of constitutional liberty, *and crushing those who only thought to make sport of him.*

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